

EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION
CIVIL ACTION NO. 07-CV-1658 PJH (EDL)

ORACLE CORPORATION, a) DEPOSITION TAKEN ON
Delaware corporation,) BEHALF OF DEFENDANTS
ORACLE USA, INC., a)
Colorado corporation,)
and ORACLE INTERNATIONAL)
CORPORATION, a)
California corporation,)

PLAINTIFFS)

) BY: NOTICE

VS.)

SAP AG, a German)
corporation, SAP) HIGHLY CONFIDENTIAL
AMERICA, INC., a)
Delaware corporation,) ATTORNEYS' EYES ONLY
TOMORROWNOW, INC., a)
Texas corporation, and)
DOES 1-50, inclusive,) WITNESS:

DEFENDANTS) JEFFREY O'DONNELL

* * * * *

The deposition of JEFFREY O'DONNELL was taken before Robyn Barrett, CSR, Court Reporter and Notary Public in and for the State of Kentucky at Large, and by videotape recording, at the offices of Stoll, Keenon & Ogden, located at 250 West Main Street, Lexington, Kentucky, on Tuesday, September 15, 2009, commencing at the approximate hour of 9:00 a.m. Said examination was taken pursuant to notice for any and all purposes consistent with the Kentucky Rules of Civil Procedure.

10:45:00 4 Q Were you involved in negotiating the terms of
10:45:04 5 Exhibit 646, the TomorrowNow agreement?
10:45:08 6 A Support services agreement, yes.
10:45:10 7 Q And without getting into the substance, did
10:45:16 8 you have assistance of counsel in negotiating
10:45:25 9 that agreement?
10:45:26 10 A Yes.
10:45:26 11 Q And when I say assistance of counsel, that
10:45:28 12 means there was an attorney that Lexmark had
10:45:31 13 either hired or in-house that you could seek
10:45:36 14 help from, correct?
10:45:37 15 A Yes.

10:46:05 2 Q Did you provide TomorrowNow with a copy of
10:46:12 3 your contract with Oracle for JDE OneWorld?
10:46:20 4 A No.
10:46:20 5 Q You satisfied yourself that what TomorrowNow
10:46:31 6 was going to do under this contract was
10:46:35 7 acceptable under your JDE OneWorld contract?
10:46:38 8 MS. MACDONALD: Objection, vague and
10:46:39 9 ambiguous and leading.
10:46:41 10 A Clarification on the question. Are you --
10:46:45 11 you're asking myself if I felt that the
10:46:49 12 services to be provided under TomorrowNow
10:46:52 13 were sufficient or equal to the services
10:46:54 14 provided by Oracle?
10:46:56 15 Q Well, let's start with that. Did you satisfy
10:47:00 16 yourself to that?
10:47:00 17 A Yes.
10:47:03 18 Q Okay. Did anyone raise a concern about
10:47:05 19 whether what TomorrowNow was going to do
10:47:07 20 under this contract was okay under the terms
10:47:12 21 of your JDE OneWorld license?
10:47:14 22 MS. MACDONALD: Objection, vague and
10:47:16 23 ambiguous and leading.
10:47:17 24 A No.

1 STATE OF KENTUCKY)

2 COUNTY OF FAYETTE)

3 I, ROBYN BARRETT, CSR, the undersigned Notary
4 Public in and for the State of Kentucky at Large,
5 certify that the facts stated in the caption hereto
6 are true; that at the time and place stated in said
7 caption the witness named in the caption hereto
8 personally appeared before me, and after being by me
9 duly sworn, was examined by counsel for the parties;
10 that said testimony was taken down in stenotype by me
11 and later reduced to computer-aided transcription
12 under my direction, and the foregoing is a true record
13 of the testimony given by said witness.

4 Upon request of counsel, the witness herein was
15 furnished a copy of the foregoing deposition to read
16 and sign. An errata sheet was also furnished for any
17 corrections the witness wished to make and will be
18 filed with the deposition upon receipt.

19 My Commission Expires: January 14, 2012.

20 IN TESTIMONY WHEREOF, I have hereunto set my hand
21 and seal of office on this the 28th day of September,
22 2009.

23 
24 _____

25 ROBYN BARRETT, CERTIFIED SHORTHAND
REPORTER, NOTARY PUBLIC, STATE AT
LARGE, KENTUCKY